

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

CHARLES MITCHELL,

Plaintiff,

v.

**DALLAS COUNTY SHERIFF
DEPARTMENT et al.,**

Defendants.

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Civil Action No. 3:12-cv-1960-O-BK

**ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

The United States Magistrate Judge made findings, conclusions, and a recommendation in this case (ECF No. 7) recommending that Plaintiff's federal constitutional claims be dismissed with prejudice as frivolous, that any remaining state constitutional claims be dismissed without prejudice, and that sanctions be imposed because Plaintiff filed this lawsuit in state court to circumvent a November 11 three-strike order. The Magistrate Judge recommended as a sanction that Plaintiff be barred from filing non-habeas civil action in this Court unless he pays the full filing fee or he has obtained leave to pursue the action by a judge of this court. Petitioner timely objected that the Magistrate Judge's recommendation deprive him of the 21-day period to file a certificate of interested persons. (ECF Nos. 9–10).

Plaintiff later filed a Motion to Clarify and Exert Texas (State) Constitutional Claims of Violations and Withdraw All United States Constitutional Claims in Original Complaint (ECF No. 11). The Magistrate Judge made supplemental findings, conclusions, and recommendation that Plaintiff's motions be denied because Plaintiff was again attempting to circumvent the three-strike

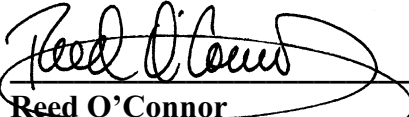
bar and averting the additional sanction (ECF No. 12). Petitioner filed no objections to this, but did file a Notice of Withdrawal of all Federal Claims (ECF No. 13) and a Petition for Compliance (ECF No. 14).

The Court has conducted a *de novo* review of those portions of the proposed findings and recommendation to which objection was made. The Court finds that the Findings, Conclusions, and Recommendation of the United States Magistrate Judge are correct. Accordingly, Plaintiff's objections are **OVERRULED**, and the Court **ACCEPTS** the Findings, Conclusions, and Recommendation of the United States Magistrate Judge as the findings of the Court. Accordingly, the Court **BARS** Plaintiff from filing non-habeas civil actions in this Court unless he pays the full filing fee for such action or he has obtained leave to pursue the action by a judge of this court, and **DENIES** Plaintiff's Motion for Leave to File Certificate of Interested Persons (ECF No. 10), Motion to Clarify and Exert Texas (State) Constitutional Claims of Violations and Withdraw All United States Constitutional Claims in Original Complaint (ECF No. 11), and Petition for Compliance (ECF No. 14).

A "non-habeas civil action" includes complaints submitted to the clerk of this court for filing and any civil case removed from a Texas state court or transferred to this court by another federal court which asserts claims and/or names defendants which could or should have been filed in the first instance in this court. In the event that a case is removed or transferred to this court, the same will be subject to summary dismissal unless within twenty days of the date of removal or transfer Plaintiff files a motion showing good cause why leave should be granted to permit him to proceed with his case in this court.

In addition, the Court **CERTIFIES** that any appeal of this action would not be taken in good faith. *See* 28 U.S.C. § 1915(a)(3). In support of this finding, the Court adopts and incorporates by reference the Magistrate Judge's Findings, Conclusions and Recommendation. *See Baugh v. Taylor*, 117 F.3d 197, 202 n.21 (5th Cir. 1997). Based on the Findings and Recommendation, the Court finds that any appeal of this action would present no legal point of arguable merit and would, therefore, be frivolous. *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983).

SO ORDERED on this **20th day of February, 2013**.



Reed O'Connor
UNITED STATES DISTRICT JUDGE